

MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
100 Maryland Avenue, 4th Floor, Rockville, Maryland 20850

AGREEMENT TO BUILD MODERATELY PRICED DWELLING
UNITS FOR A PERMIT OF 50 OR MORE DWELLINGS

CLARKSBURG TOWN CENTER

THIS AGREEMENT dated the 31st day of May, 2002, by and between TERRABROOK CLARKSBURG, L.L.C., a Delaware limited liability company (herein "Applicant") and MONTGOMERY COUNTY, MARYLAND (herein "County").

WHEREAS, the Applicant plans to construct 50 or more dwelling units in the subdivision known as Clarksburg Town Center located in Montgomery County, Maryland in the RMX-2 Zone; and

WHEREAS, the provisions of Chapter 25A of the Montgomery County Code, 1994, as amended, require that a percentage of the total number of dwelling units in a residential development project be moderately priced dwelling units (MPDUs); and

WHEREAS, the County is willing to issue building permits for the construction of dwelling units under the terms stated in the Agreement and pursuant to the provisions of Chapter 25A of the Montgomery County Code, 1994 as amended; and

WHEREAS, the Applicant and the County anticipate either amending this Agreement or entering into subsequent agreement(s) to build additional MPDUs within the Clarksburg Town Center pursuant to subsequent site plan approval(s).

NOW, THEREFORE, in consideration of the mutual promises, conditions and obligations provided for herein, and to comply with Section 7-506.1, the parties hereto agree as follows:

1. Applicant agrees to construct 1,300 total dwelling units in the subdivision, including 163 MPDUs, in strict accordance with the construction schedule attached hereto and made a part hereof as Exhibit "A".
2. All land owned by the Applicant in whole or in part or which is under contract to the Applicant in Montgomery County, Maryland, which is available for residential building development is shown on the Statement of Land Owned, attached hereto, and made a part hereof as Exhibit "B".
3. The Applicant shall construct MPDUs along with or preceding market rate dwelling units in the subdivison, and the County agrees that compliance with the construction

schedule in Exhibit "A" shall satisfy the MPDU staging requirement and the provisions of Section 25A(5)(i) of the Montgomery County Code, 1994 as amended.

4. The County will issue building permits and use and occupancy permits as requested by the Applicant for Clarksburg Town Center. Applicant acknowledges County's authority to suspend or revoke any or all building or occupancy permits issued to Applicant for Clarksburg Town Center and/or to suspend or deny the issuance of all subsequent permit requests by Applicant for Clarksburg Town Center, and/or invoke any other of the enforcement measures authorized by Section 25A-10 of the Montgomery County Code, 1994, as amended, and Executive Regulations adopted pursuant thereto, for failure to comply with this Agreement.

5. (a) Applicant must offer MPDUs for sale or rental in accordance with the requirement of Chapter 25A of the Montgomery County Code, 1994, as amended, and in accordance with any Executive Regulations promulgated, or as may be promulgated, in the furtherance of said Chapter. Applicant agrees to offer the MPDUs for sale or rent by completing fully and truthfully the Offering Agreement form provided by the Department of Housing and Community Affairs. The Contract of Sale or the Lease executed by Applicant for the sale or rental of any MPDU must contain language imposing a covenant running with the land invoking the requirements of Chapter 25A. This provision is not to be construed as granting the rental option to those Applicants who are not eligible to rent their MPDUs according to the provisions of Chapter 25A.

(b) Applicant must, at the time the Contract of Sale or Rental Agreement is executed or otherwise agreed to, or entered into, by Applicant, whether written or oral, or at such other time as may be requested by the County, execute a separate Declaration of Covenants, to run with the land, subjecting the MPDUs to the requirement of Chapter 25A, Montgomery County Code, 1994, as amended.

(c) The Contract of Sale, Deed, Lease and the separate Declaration of Covenants must contain language as contained in Exhibit "C" attached hereto and made a part hereof. In addition, the duly recorded Deed or executed Lease Agreement must contain specific language, in conspicuous form, subjecting the herein referred property to the Declaration of Covenants, which language shall contain the date of recordation and the Liber and Folio reference of the said duly recorded Declaration of Covenants.

(d) The Declaration of Covenants contained in Exhibit "C" must be fully executed by the Applicant and must contain the necessary jurat for either individual or corporate

signatures, as the case may be, in such form as may be required to properly record said Declaration of Covenants among the Land Records of Montgomery County, Maryland. Said Declaration of Covenants must be returned to Montgomery County for approval, execution and recordation by Montgomery County among the Land Records.

6. Applicant, his agents, heirs, assigns or successors, hereby irrevocably assigns to Montgomery County, Maryland, all its right, title, interest and obligation to enforce the provisions of the Declaration of Covenants referred to herein during the term the Covenants are in effect; to institute any proceeding in law or equity for the collection of such sums as may be in excess of those allowed by law; or to enjoin any violation or attempted violation of said Covenants or the provisions of Section 25A of the Montgomery County Code, 1994 as amended.

7. Applicant must provide a copy of the final Contract of Sale or Lease Agreement for each MPDU covered by the building permits issued under the Agreement to the County, as well as settlement sheets and such other documents and information as may be required by Executive Regulations.

8. The County shall be entitled to enter upon the property and/or into the subject unit or units for purposes of inspection at all reasonable times to determine compliance with the Agreement.

9. The number, type, location and development phases of the MPDUs to be constructed by Applicant are shown on the approved site plan attached hereto and made a part hereof as Exhibit "D".

10. A waiver by the County of a specific default must be in writing from the County, and shall not be a waiver of any other subsequent default of similar or different nature.

11. No failure on the part of the County to exercise, and no delay in exercising, any right to remedy permitted by law or pursuant to this Agreement will operate as a waiver thereof.

12. Applicant may make written application to the Director of the Department of Housing and Community Affairs or designee for a modification of the construction schedule set forth on Exhibit "A", describing the basis for such change. The Director or designee must review the application and make a final determination on the request which must be delivered to the Applicant within thirty days. Applicant may not depart from the schedule set forth on Exhibit "A" without the prior approval of the Director or designee.

13. Any notices sent pursuant to this Agreement must be delivered in writing to:

Montgomery County:
~~ERIC LAVSEP~~
Department of Housing and Community Affairs
100 Maryland Avenue, 4th Floor
Rockville, Maryland 20850

Applicant:
Terrabrook Clarksburg, L.L.C.
c/o Tracy Z. Graves
General Manager
Terrabrook
42935 Waxpool Road
Ashburn, VA 20148

14. No member, officer or employee of the County, and no other public official of the County will either exercise any function or responsibility with respect to the subject matter of this Agreement during his or her tenure, or for one year thereafter have any interest, direct or indirect, in the subject matter of this Agreement. This section will not be construed to prohibit any such person from owning an MPDU as a personal residence.

15. This Agreement is binding upon the agents, successors, heirs and assigns of the Applicant. The foregoing notwithstanding, the obligations and liabilities of Applicant shall apply for only so long as Applicant is the fee simple owner of the property. When Applicant ceases to own a fee simple interest in the property, the obligations and liabilities of Applicant shall automatically become the obligations and liabilities of Applicant's successor-in-interest, and Applicant shall automatically be relieved of any further obligation or liability hereunder.

16. The terms of this Agreement will survive the execution and delivery of any deeds or leases, and shall not merge therein.

17. Applicant agrees to abide by and comply with all applicable laws and regulations regarding the subject matter of this Agreement, whether or not such laws or regulations are herein specifically enumerated or referred to, including those amendments described in Montgomery County Council Bill No. 25-88, if applicable, and Applicant agrees to sign such documents as may be required to effectuate the intent and purpose of this Agreement.

18. The County shall, from time to time, upon not less than ten (10) days' notice from Applicant, execute and deliver to Applicant and/or any mortgagee and/or purchaser of all or a portion of the Project, from time to time, a certificate in recordable form, stating (i) that this Agreement is unmodified and in full force and effect, or, if modified, that this Agreement is in full force and effect as modified and stating the modification, and (ii) whether or not Applicant is

in default in any respect under this Agreement, and, if in default, specifying the nature of such default.

IN WITNESS WHEREOF, Applicant has caused these presents to be executed by its Authorized Representative and its corporate seal to be affixed, and does hereby appoint Tracy Z. Graves as its true and lawful attorney-in-fact to acknowledge and deliver these presents, and Montgomery County, Maryland has on the day and year hereinabove written caused these presents to be signed by Elizabeth B. Davison representing the Department of Housing and Community Affairs, and does hereby appoint the said Elizabeth B. Davison its true and lawful attorney-in-fact to acknowledge and deliver these presents.

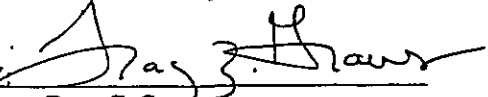
WITNESS/ATTEST:

APPLICANT:

TERRABROOK CLARKSBURG, L.L.C.,
a Delaware limited liability company

By: WESTERRA MANAGEMENT, L.L.C.,
a Delaware limited liability company,
its authorized representative

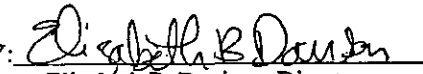


BY: 
Tracy Z. Graves
Assistant Vice President

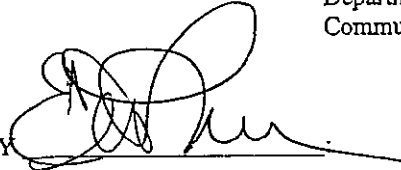
WITNESS/ATTEST:

MONTGOMERY COUNTY, MARYLAND



BY: 
Elizabeth B. Davison, Director
Department of Housing and
Community Affairs

STAFF REVIEW BY:




STATE OF ~~MARYLAND~~ Virginia
COUNTY OF ~~MONTGOMERY~~ Loudoun

I HEREBY CERTIFY that before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared Tracy Z. Graves, attorney in fact for Applicant who is personally well known to me as the person named as attorney-in-fact in the foregoing instrument, and as attorney-in-fact, as aforesaid executed and acknowledged the foregoing instrument in the name and on behalf of Applicant, for the uses and purposes herein contained.

WITNESS my hand and seal this 31st day of may

My Commission Expires:

08/31/05


NOTARY PUBLIC



STATE OF MARYLAND
COUNTY OF MONTGOMERY

I HEREBY CERTIFY that before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared Elizabeth B. Davison, attorney in fact for Montgomery County, Maryland, who is personally well known to me, and as attorney-in-fact as aforesaid, and by virtue of the power vested in her, executed and acknowledged the foregoing instrument to be the act and deed of Montgomery County, Maryland for the uses and purposes herein contained.

WITNESS my hand and seal this 6th day of JUN, 2002.

My Commission Expires:

8/1/05

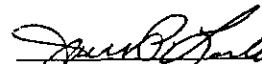

NOTARY PUBLIC

EXHIBIT "A"
CONSTRUCTION SCHEDULE

In compliance with Chapter 25A of the Montgomery County Code, 1994, as amended, Applicant agrees that the Units in Clarksburg Town Center will be constructed in accordance with the schedule indicated below. Applicant is aware that this schedule must indicate that the MPDUs shall be constructed along with, or preceding, other dwelling units in Clarksburg Town Center and that failure to comply with this schedule may result in suspension or revocation of any building permit, occupancy permit or subdivision plan associated with the project described herein or such other enforcement measure authorized by Chapter 25A of the Montgomery County Code, 1994, as amended. The MPDU staging plan must be consistent with the site plan enforcement agreement. The Applicant must sequence the construction of the MPDUs so that the construction of MPDUs reasonably coincides with the construction of the market rate housing. Subject to the construction schedule below, the last building built must not contain only MPDUs.

Development Phase	No. Of Market Priced Units	Approx. Mo. & Yr. Of Constr. 1/ Start of Mkt. Price Units*	Approx. Mo. & Yr. Of Constr. 2/ Completion of Market. Price Units*	Number of MPDUS	Approx. Mo. & Yr. Of Constr. Start of MPDUs*	Approx. Mo. & Yr. Of Constr. Completion of* MPDUs
1B-1	23	11/01	04/02	0	N/A	N/A
1B-2	115	02/02	08/02	9	06/02	12/02
1B-3	154	11/02	05/03	17	03/03	09/03
2	487	05/03	11/03	46	09/03	03/04
1A	165	11/02	05/03	23	03/03	09/03
3	356	11/03	05/04	68	03/04	09/04

Total Units

1. "Construction Start" is defined as the date on which footings are poured for the subject units.
2. "Construction Completion" is defined as the date that final inspections by the Department of Permitting Services are completed.

* Builder to determine exact date for construction start and completion.

EXHIBIT "B"

STATEMENT OF LAND OWNED FOR COMPLIANCE WITH THE
MODERATELY PRICED HOUSING LAW

Pursuant to Article 25-A-5 (h) of the Montgomery County Code, 1994, as amended, Applicant hereby provides a list* which is attached hereto as Schedule A, ** describing all land owned in whole or in part, or which is under contract to, the Applicant, in Montgomery County, Maryland, which is available for residential development. Applicant, in consideration for the issuance of Building Permit Application No. SEE NOTE 1 affirms that the said Schedule A includes all property as described above for which:

1. A preliminary subdivision plan or development plan has been filed or for which a building permit application has been filed; and
2. Public water and sewer will be utilized; and
3. The optional zoning provisions of the Moderately Priced Dwelling Unit Law and/or Zoning Ordinance, are applicable, Article 25A.

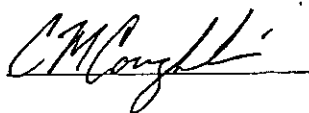
Applicant affirms that the attached Schedule A includes all such property in Montgomery County, Maryland and not solely that property within the subdivision which is the subject of this Building Permit Application.

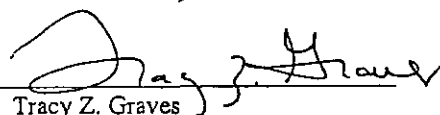
WITNESS/ATTEST:

APPLICANT:

TERRABROOK CLARKSBURG, L.L.C.,
a Delaware limited liability company

By: WESTERRA MANAGEMENT, L.L.C.,
a Delaware limited liability company,
its authorized representative



BY: 
Tracy Z. Graves
Assistant Vice President

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the State of
~~Maryland~~, County of ~~Montgomery~~, by Applicant(s) this 31st day of May, 2002.
~~Virginia~~ Loudoun

My Commission Expires: 08/31/05


NOTARY PUBLIC

* For any Building Permit Application subsequent to the initial application subject to these requirements, Applicant needs only submit changes to the list of property holdings.

** Schedule A shall contain information stating the owner's name, location and size of parcels, subdivision name, Liber and folio references of latest deeds and Plat Book references.

NOTE 1: Building permit applications to be identified at time of application by builder.

SCHEDULE A
LISTING OF PROPERTY IN MONTGOMERY COUNTY, MARYLAND

Terrabrook Clarksburg, L.L.C., a Delaware limited liability company, owns the following property in Montgomery County: all that land acquired from Clarksburg Land Associates, LLLP and Piedmont Land Associates, LLLP by Deed dated February 4, 2000 and recorded among the Land Records of Montgomery County, Maryland, in Liber 17865 at folio 495.